

REMARKS

By this amendment, claims 1 & 10 have been amended. Accordingly, claims 1-13 and 23-25 are currently pending in the application, of which claims 1, 10 and 23 are independent claims.

Entry of the Amendments and Remarks is respectfully requested because entry of Amendment places the present application in *prima facie* condition for allowance, or in the alternative, better form for appeal. Applicant respectfully submits that the above amendments do not add new matter to the application and are fully supported by the specification. Applicant further submits that no issues requiring a further search are presented.

In view of the above amendments and the following Remarks, Applicant respectfully requests reconsideration and timely withdrawal of the pending objections and rejections for the reasons discussed below.

Rejections Under 35 U.S.C. §103

Claims 1-13 and 24-25 stand rejected under 35 U.S.C. §103(a) for being unpatentable over U. S. Patent No. 6,383,482 issued to Gorsek (“Gorsek”) in view of G. Eisenberg, “HMB and Pyruvate Anchor Sports Nutrition Sales,” Natural Foods Merchandiser, May 1998, page 81 (“Eisenberg”). This rejection is respectfully traversed. Claim 23 which was added by the amendment dated March 10, 2003 was not referenced in the Office Action. Applicant assumes that the present rejection applies to claim 23 and that its omission was a clerical oversight.

Claims 1, 10 and 23 are directed to specific combinations of elements for a composition that promotes the loss of weight in an individual. Each claim requires a specific combination of elements to form the appetite suppressant. Gorsek is directed to a weight loss formulation that contains a green tea extract, hydroxycitric acid, 5-hydroxytryptophan, glucomannan, chromium

picolinate, and *lactobacillus acidophilus*. Gorsek fails to disclose, teach, or suggest an appetite suppressant and weight loss composition as required by claims 1, 10 and 23. Among other things, Gorsek fails to disclose, teach or suggest, an appetite suppressant and weight loss composition comprising the combination of green tea, green tea leaf extract, HMB, and a chromium additive. Accordingly, Gorsek fails to disclose, teach or suggest all the elements required by claims 1 and 10.

The deficiencies of Gorsek are not cured when combined with Eisenberg. Eisenberg teaches that HMB is not an appetite suppressant and is used to promote weight gain. Eisenberg is an article that discusses the use of HMB and pyruvate in sports nutrition. Eisenberg teaches that HMB is not an *appetite suppressant*. For example, the article discloses that one person taking HMB as a supplement gained three pounds in the first five days and gained 12 more pounds over the next two weeks. (Eisenberg at column 2-3.) Further, Eisenberg states that athletes and celebrities *are moving away from appetite suppressers and toward supplements such as HMB* to reduce fat, increase muscle mass and increase endurance. (Eisenberg, column 4)(emphasis added.)

The Examiner makes a distinction between weight gain from muscle and from fat, and suggests that Eisenberg reduces fat and increases lean body mass. While Eisenberg may reduce fat and increase body mass, the claims of the present invention require that the unique combination of elements in the composition promote a decrease in weight of an individual. Eisenberg, while reducing fat is increasing body mass individuals are gaining weight not promoting weight loss as required by Applicant's claims 1, 10 and 23.

Accordingly, Gorsek and Eisenberg whether taken alone or in combination with one another fail to disclose, suggest or teach an appetite suppressant and weight loss composition

comprising the combination of green tea, green tea leaf extract, HMB and a chromium additive as required by claim 1, 10, and 23.

Accordingly, Applicant respectfully requests withdrawal of the 35 USC 103(a) rejection of claims 1-13 and 23-25. Since none of the prior art of record, whether taken alone or in any combination, discloses or suggests all of the features of the claimed invention, Applicant respectfully submits that independent claims 1, 10 and 23, and all the claims that depend therefrom are allowable.

CONCLUSION

All of the stated grounds of objection and rejection have been properly traversed, accommodated, or rendered moot. Applicant therefore respectfully requests that the Examiner reconsider all presently outstanding objections and rejections and that they be withdrawn. Applicant believes that a full and complete response has been made to the outstanding Office Action and, as such, all claims are in condition for allowance. If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.

Prompt and favorable consideration of this Amendment is respectfully requested.

Respectfully submitted,



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